

EXHIBIT 1

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OHIO

WESTERN DIVISION

BRIAN WURZEL,)	
)	
)	
Plaintiff,)	
)	
vs.)	Case No. 3:09CV498
)	
WHIRLPOOL CORPORATION,)	Judge Carr
)	
)	
Defendant.)	

- - -

VIDEOTAPED DEPOSITION OF BRIAN WURZEL

DATE: September 10, 2009 at 9:27 a.m.

PLACE: Anspach Meeks Ellenberger
300 Madison Avenue
Suite 1600
Toledo, Ohio

REPORTER: Casey G. Schreiner, RMR-RDR
Notary Public

- - -

1 A. Boat mechanic.

2 Q. Which marinas?

3 A. Happy Days, Drawbridge, Lakeshore, and
4 one that was new. I can't remember the name of it.

5 Q. Did you actually fill out an application
6 there?

7 A. Yes, I did.

8 Q. At all three?

9 A. Yes -- well, four, really.

10 Q. And have you heard back on any of those
11 jobs?

12 A. No, I haven't.

13 Q. Did you have interviews at any of them?

14 A. No, I haven't.

15 Q. So it was just a matter of you filling
16 out the application and turning it in?

17 A. That's correct.

18 Q. Was there any inquiry or discussion,
19 either in the application or when you turned it in,
20 about your heart condition?

21 A. No.

22 Q. So no mention of that?

23 A. No.

24 Q. All right. You started working at
25 Whirlpool in March of 1983; is that right?

1 A. That's correct.

2 Q. And how did you find out about the job?

3 A. My father worked there, and they were
4 advertising in the paper.

5 Q. And what job did you start out in?

6 A. An assembler.

7 Q. And how long did you do that job?

8 A. To the best of my knowledge, it was two
9 years.

10 Q. Two years?

11 A. Yes.

12 Q. And where did you go from there?

13 A. To the machine shop.

14 Q. In what position?

15 A. Assembly and running machines.

16 Q. And how long did you stay there?

17 A. It's been a while ago. I can't really
18 recall the time frame.

19 Q. Your best estimate.

20 A. Between cutbacks, I would say five years.

21 Q. Okay. Where did you go then?

22 A. They moved me to plastics during a
23 cutback.

24 Q. Again, as an assembler?

25 A. I was unloading the plastics press.

1 Q. Now, sir, what is the medical condition
2 from which you suffer?

3 A. Prinzmetal's angina.

4 Q. All right. And it's my understanding
5 that was diagnosed in November of 2007; is that right?

6 A. Correct.

7 Q. And who diagnosed that?

8 A. Dr. Stockton is who performed the
9 catheterization, if I'm not mistaken.

10 Q. What's your -- so he's the one -- you say
11 he performed the catheterization. Is he also the one
12 who diagnosed it?

13 A. During the catheterization, I had a
14 spasm, they thought it was a blockage of my artery. I
15 was given medication, and I was sent to a -- I'm not
16 sure of the physician's name to have stents put in.
17 By the time I got to the other site for the other
18 physician, my arteries were unblocked. That's when it
19 was diagnosed as to what I had.

20 Q. What is your understanding as to what
21 Prinzmetal angina is?

22 A. My veins in my heart spasm shut.

23 Q. And by "spasm," do you mean
24 contracting --

25 A. That's correct.

1 Q. -- or closing?

2 A. Correct.

3 Q. And what treatment have you received with
4 respect to that condition since diagnosis?

5 A. I'm not sure I understand what you mean.

6 Q. Okay. You -- for example, you said that
7 you're currently taking Procardia, right?

8 A. That's correct.

9 Q. And that you take nitroglycerin pills as
10 required?

11 A. Right.

12 Q. And I -- and by "as required," does that
13 mean that when you have an angina attack, you can use
14 the nitroglycerin to attempt to alleviate the symptoms
15 of the attack?

16 A. That's correct.

17 Q. All right. Is there any other treatment
18 that you receive for the -- for the angina, whether it
19 be through medication or some other form of assistance
20 device or physical therapy, anything like that?

21 A. No.

22 Q. So the only form of treatment that you
23 have received for this condition from its inception
24 has been medication?

25 A. That's correct.

1 Q. And the second?

2 A. Karen.

3 Q. Okay. All right. Okay. Back to what we
4 were talking about. Does the angina have any impact
5 on your daily life?

6 A. Can you be more specific?

7 Q. I can try to be. Does it limit you in
8 any way from doing anything?

9 A. No.

10 Q. Nothing at all?

11 A. Only when I have a spasm, and it depends
12 on the severity.

13 Q. But if -- if no spasm is occurring, if
14 I'm understanding you correctly, you live your life
15 normally and without any limitations whatsoever; is
16 that correct?

17 A. That's correct.

18 Q. And what happened -- and when you say
19 "spasm," is that the same as if we were to say you
20 were having an angina attack?

21 A. That's correct.

22 Q. All right. And what happens when you
23 have an angina attack?

24 A. Tightness in my chest, shortness of
25 breath, numbness of my left arm, pain in my neck.

1 Almost symptomatic of a heart attack.

2 Q. Dizziness?

3 A. At times, yes.

4 Q. Fatigue?

5 A. Depending on the severity.

6 Q. Nausea?

7 A. No.

8 Q. When you say tightness in your chest, I
9 assume that is also pain?

10 A. Right.

11 Q. Anything else in terms of symptoms of an
12 attack?

13 A. No.

14 Q. So you described tightness or pain in the
15 chest, shortness of breath, numbness in your left arm,
16 pain in your neck, dizziness, fatigue. Is that the
17 full extent of the symptoms that you experience?

18 A. Yes. Yes, it is.

19 Q. Okay. One other rule of thumb for
20 taking -- or giving a deposition, which I forgot to
21 cover, and I apologize right now, and this is a normal
22 thing as well.

23 Oftentimes, you know what I'm asking you
24 before I finish asking it, and what happens is you
25 wind up answering the question in the middle of me

1 nitroglycerin pills you may need to alleviate the
2 symptoms?

3 A. I know if I need more than three, I'm in
4 trouble.

5 Q. You're in trouble. Have you ever had to
6 take more than three?

7 A. No.

8 Q. So is it -- are you saying, then, that
9 the nitroglycerin pills have always -- you've always
10 been able to alleviate or eliminate the symptoms
11 through the use of nitroglycerin?

12 A. Yes.

13 Q. Now, the -- the Prinzmetal angina, that's
14 the condition that you've identified in relation to
15 this lawsuit, right?

16 A. That's correct.

17 Q. Do you believe that you have a disability
18 with respect to your Prinzmetal angina?

19 A. I wouldn't call it a disability. I would
20 call it, consider it a medical condition.

21 Q. But am I to understand that you do not
22 believe that you are disabled; is that right?

23 A. No.

24 Q. Am I right or wrong in that?

25 A. I believe I'm not disabled.

1 Q. So you believe you are not disabled; is
2 that correct?

3 A. Right.

4 Q. You just have a medical condition?

5 A. That's correct.

6 Q. And when you say you're not disabled,
7 what do you mean by "disabled"?

8 A. I can perform normal, everyday functions.
9 It's just when my medical condition flares up, I have
10 to take some time.

11 Q. How much time?

12 A. Depending on the severity, it can be 10
13 minutes; or if it's a severe spasm, sometimes I lay
14 down and take a nap.

15 MR. WIT: Can you stamp that as

16 3.

17 (Court Reporter marked
18 Defendant's Exhibit 3.)

19 BY MR. WIT:

20 Q. Is "Wurzel" or "Wurtzel"?

21 A. "Wurzel."

22 Q. Mr. Wurzel, I'm handing you what has been
23 marked as Defendant's Exhibit 3, which is a record
24 from a visit to the emergency room at Bellevue
25 Hospital on April 20, 2003.

1 Do you recall going to the emergency room
2 on this date?

3 A. Yes.

4 Q. All right. And this was a visit to the
5 emergency room, as you can see, because of chest pain?

6 A. That is correct.

7 Q. Does this visit to the ER reflect the
8 first time that you experienced chest pain to such a
9 degree that you sought medical attention?

10 A. Yes, it is.

11 Q. So we can identify April 20, 2003, as the
12 onset of your heart condition?

13 A. That's correct.

14 Q. All right. Do you know, what is -- were
15 the problems you were having chest pain-wise, was that
16 ever diagnosed as a heart attack?

17 A. To the best of my knowledge, all the
18 tests confirmed that it was not a heart attack.

19 Q. No. Have you ever described your
20 problems as such, as being a heart attack?

21 A. Until I was diagnosed with what I had, I
22 was -- I would say it was heart attack-feeling
23 symptoms.

24 Q. Okay. But I guess what I'm asking you,
25 did you ever tell anyone that you had had a heart

1 A. I couldn't really tell you.

2 Q. What was it the last time you held the
3 job?

4 A. If I'm not mistaken, it was around 18
5 dollars an hour.

6 Q. Had you received any raises from the time
7 when you left the position versus when you took the
8 job?

9 A. I'm not --

10 Q. Were there -- did you receive any raises
11 in pay while you were a forklift operator?

12 A. Yes. Everybody received yearly raises.

13 Q. Okay. And when you're a materials
14 handler, are you operating a forklift full time?

15 A. My job at that position was to take boxes
16 of literature out to a subassembly area. So at times
17 I would remove boxes from shelves, restock the boxes
18 in the morning, haul the boxes out, help unload
19 trucks, stack pallets into storage racks. It
20 contained numerous functions.

21 Q. How much time on a daily basis do you
22 think you spent operating the forklift?

23 A. Out of eight hours, I would guesstimate
24 five to five-and-a-half hours.

25 Q. And for the remaining time that you spent

1 working, including breaks, of course, you're, as I
2 understand it, either moving boxes, packing boxes, or
3 unpacking boxes?

4 A. That's correct.

5 Q. And how much do these boxes weigh?

6 A. They varied from 1 pound to 35 pounds.

7 Q. Where are you moving them?

8 A. I was moving them from storage shelves,
9 packing them on a skid and transporting them off to a
10 subassembly area for information packets for the units
11 being produced.

12 Q. All right. So if we take your job from
13 the first step to the last step, as I understand it,
14 your responsibility is to pack literature into a box
15 that's contained in storage in a warehouse; that's
16 step one, right?

17 A. My morning began, I would come in; I
18 would have skids of literature that they received on
19 midnight shift sitting on the floor. I would take
20 them and put them into the shelves in their proper
21 storage areas.

22 When I was done with that, I would go and
23 do what they consider line returns. That's literature
24 that the shift before didn't use. I would bring them
25 back and put them in the storage -- their proper

1 storage areas.

2 Q. And this is done on a forklift, or not?

3 A. That's correct.

4 Q. Okay.

5 A. Except for when I was individually
6 putting boxes in the shelves, I would get off the
7 forklift and physically lift them into position.

8 Q. And the literature that we're talking
9 about are basically the product information booklets
10 that come with the product; is that right?

11 A. That's correct, use and care guides.

12 Q. And the product in question is what?

13 A. Washing machines.

14 Q. And you're transporting the literature,
15 which is contained in boxes, and the boxes are on a
16 skid, from the warehouse to a subassembly area --

17 A. That's correct.

18 Q. -- using the forklift?

19 A. That's correct.

20 Q. All right. And so you're moving from the
21 warehouse to the plant floor?

22 A. That's correct.

23 Q. And back and forth?

24 A. That's correct.

25 Q. And there are people throughout the areas

1 where you're driving, right?

2 A. That's correct.

3 Q. A lot of people?

4 A. Uh-huh, correct.

5 Q. And there's no -- as I understand it, no
6 type of physical divider that separates you on your
7 forklift from the pedestrians walking throughout the
8 plant, right?

9 A. That's correct.

10 Q. Basically, there are two lines and you're
11 supposed to drive in between the two lines; is that
12 right?

13 A. That's correct.

14 Q. All right. And how fast is the forklift
15 you generally drive?

16 A. I would say between 5 and 7 miles per
17 hour, top speed. They were governed to not exceed a
18 certain speed. What that was, I'm not a hundred
19 percent sure.

20 Q. Did you have to receive any training in
21 terms of how to drive a forklift?

22 A. Yes, I did.

23 Q. And I would assume you received that at
24 the time you were awarded the position?

25 A. I received the training back in 1998 or

1 license and when it was renewed?

2 A. Yes.

3 Q. All right. Now, the forklift that you're
4 operating is a substantial piece of equipment, right?

5 A. Yes, it is.

6 Q. It's a heavy vehicle?

7 A. Yes, it is.

8 Q. You hit someone or something with it, you
9 have the potential to seriously injure yourself or the
10 person being struck, right?

11 A. That is correct.

12 Q. You could even kill someone if you hit
13 them with a forklift?

14 A. Oh, that is correct.

15 Q. And would you agree that it's important
16 for Whirlpool to ensure that you're able to drive a
17 forklift in a safe manner so as not to potentially
18 injure yourself or someone else?

19 A. I would agree.

20 Q. Okay. So you know as of April of 2003
21 that you have this heart problem, but it's not
22 diagnosed until November of 2007, right?

23 A. That's correct.

24 (Court Reporter marked
25 Defendant's Exhibit 4.)

1 Q. And did you have an understanding as to
2 what "intermittent leave" meant?

3 A. Not to -- I understood it to be if I was
4 feeling bad, then I could be -- I could leave work
5 without it going on my work record. I would not be
6 paid for the time I was off if I left during the day,
7 but it would not be held against me.

8 Q. Okay. In other words, though, you were
9 not seeking leave for a block of days or time, right?

10 A. That's correct.

11 Q. You were seeking leave in the case where
12 you had an attack, or a spasm, and had to leave work
13 early, or not go to work at all on a given day?

14 A. That's correct.

15 Q. Okay. And that request was approved?

16 A. Yes.

17 Q. And, in fact, since April of 2003, you've
18 applied for FMLA leave in relation to your condition,
19 I counted, a total of six times, if you include
20 Exhibit 6; isn't that right?

21 A. Yes. Because they would only allow me to
22 have it for a certain period of time, and I had to
23 renew --

24 Q. Right.

25 A. -- it after a certain period of time.

1 Q. It was approved on six-month increments,
2 right?

3 A. That's correct.

4 Q. Okay. So if we just make sure we have
5 all the applications.

6 (Court Reporter marked
7 Defendant's Exhibit 7.)

8 BY MR. WIT:

9 Q. So if we look at Exhibit 7, this is your
10 application for family and medical leave for May of
11 2007, right?

12 A. That is correct.

13 Q. And this was approved for the period of
14 time between May 4 and November 4, 2007?

15 A. That is correct.

16 Q. And then if we look at Exhibit 8.

17 (Court Reporter marked
18 Defendant's Exhibit 8.)

19 BY MR. WIT:

20 Q. Do you have that in front of you?

21 A. Yes, I do.

22 Q. This is your application for family and
23 medical leave in November of 2007?

24 A. That is correct.

25 Q. And this leave was approved through May

1 2008?

2 A. Oh, okay, yes. I didn't see that black
3 box there.

4 Q. You recall it being approved for a
5 six-month period of time?

6 A. That's correct, yes.

7 Q. Okay. And then Exhibit 9?

8 (Court Reporter marked
9 Defendant's Exhibit 9.)

10 BY MR. WIT:

11 Q. This is your application -- could I see
12 the one you're looking at? I'm one ahead of you.

13 Exhibit 9 is the application for family
14 and medical leave that you submitted in May of '08,
15 right?

16 A. That's correct.

17 Q. Which was approved through November of
18 '08?

19 A. That's correct.

20 (Court Reporter marked
21 Defendant's Exhibit 10.)

22 BY MR. WIT:

23 Q. And then Exhibit 10, this is your
24 application in late October of 2008, which would have
25 been approved through May of 2009, right?

1 A. Correct.

2 Q. So each one of these applications -- so
3 actually I count a total of -- oh.

4 You also applied for family and medical
5 leave with respect to this condition in 2004; isn't
6 that right?

7 A. That, unless I seen the paperwork, I
8 can't be a hundred percent sure.

9 MR. WIT: Can we go off for a
10 minute?

11 THE VIDEOGRAPHER: The time now
12 is 11:06 a.m. Going off the record.

13 (Discussion had off the record.)

14 THE VIDEOGRAPHER: The time now
15 is 11:07 a.m. going back on the record.

16 (Court Reporter marked
17 Defendant's Exhibit 11.)

18 BY MR. WIT:

19 Q. And, actually, Mr. Wurzel, I think I
20 misspoke. It appears that you applied for FMLA
21 intermittent leave in July of '04 in relation to your
22 kidney stones?

23 A. According to this, yes, I have.

24 Q. And that was approved, as well, was it
25 not?

1 a degree that he says, at least, that he contacts
2 Dr. Roush?

3 A. Yes. I think he was filling in for
4 Dr. Issa at that time.

5 Q. They work in the same group?

6 A. Yes.

7 Q. Okay. Is that a legitimate concern, in
8 your opinion, for Dr. Marshall to have, that you are
9 able to safely perform your role as a forklift
10 operator, given the nature of your condition?

11 A. Oh, yes.

12 Q. Had you ever seen Dr. Marshall before
13 November 8, 2007? In any capacity, I mean. Not just
14 going to see him at the health center?

15 A. Not to the best of my recollection, no.

16 Q. So this was the first meeting you had had
17 with him?

18 A. Yes.

19 Q. Do you know what kind of doctor he is?

20 A. No, I don't.

21 Q. Do you know where else he practices, if
22 anywhere?

23 A. As far as I understood, he worked at
24 Memorial Hospital.

25 Q. Do you know if he was an actual employee

1 of Whirlpool?

2 A. I know he was employed through Whirlpool
3 as their company doctor, and that's all I know.

4 Q. All right. You don't know the
5 relationship between Whirlpool and Dr. Marshall, other
6 than to say he worked in the health center sometimes?

7 A. That's correct.

8 Q. All right. And what's -- what was your
9 understanding -- did you have any understanding as to
10 what he did for Whirlpool?

11 A. As far as I knew, cleared people to come
12 back to work.

13 Q. That's the only reason why you saw him,
14 right?

15 A. That's correct.

16 Q. All right. Why don't we look back to
17 Exhibit 12, and there is an entry for March 11, 2008,
18 on the bottom of the second page.

19 Do you see where I'm looking?

20 A. Yes.

21 Q. And I'm reading -- and I'm quoting here:
22 It says, 0625, reports to H.C. because not feeling
23 good. Requests BP check, 158/98. States hasn't felt
24 well for the past couple days. Has issues with heart.
25 Also is a jeep driver. Strongly advised could not

1 drive jeep in his condition. Claims, "I know, I
2 haven't taken any nitro yet. Trying to fight it."
3 Employee called wife, going home FMLA.

4 Did I read that correctly?

5 A. Yes, that's the way it looks here.

6 Q. Okay. Does that accurately describe what
7 happened when you visited the health center on March
8 11, 2008?

9 A. To the best of my recollection, yeah. I
10 felt that I could not safely perform my job and I
11 shouldn't be driving, so I went home.

12 Q. What was it about the way you were
13 feeling that led you to the conclusion that you
14 couldn't safely perform as a forklift operator?

15 A. Fatigued, just -- it says I was trying
16 not to take a nitro, fighting it, but I think I ended
17 up taking one.

18 Q. Okay.

19 A. And it just left me feeling fatigued, and
20 I felt that I was -- shouldn't be, you know, driving a
21 forklift due to my safety and the safety of others.
22 So I went home for the day.

23 Q. And it indicates here that you hadn't
24 been feeling good for the past couple days at that
25 point, right? So you'd had attacks on successive days

1 A. Yeah. I can't say one way or another if
2 he has or not.

3 Q. All right. And what I've handed you,
4 Exhibit 14, is the report of your examination with
5 Dr. Marshall on March 13th, 2008, right?

6 A. That's correct.

7 Q. And is this a full and accurate
8 description of what you said to Dr. Marshall and what
9 he said to you during that visit?

10 A. It could very well be, yes.

11 Q. Well, read it.

12 A. Yeah, I've read it. I'm not --

13 Q. Okay.

14 A. Because, you know, I'm not too clear on,
15 you know, some things, I'm not going to argue that
16 it's not or --

17 Q. All right. So to the best of your
18 recollection, as you sit here today, this is a full
19 and accurate description of what happened during your
20 March 13, 2008, visit with Dr. Marshall?

21 A. Yes.

22 Q. All right. And according to
23 Dr. Marshall, because you had back-to-back episodes or
24 spasms, he wants you to consult with your cardiologist
25 before you return to work, right?

1 A. That's correct.

2 Q. Do you think that that was a reasonable
3 concern for Dr. Marshall to have?

4 A. Oh, yeah. I didn't argue the point, no.

5 Q. Okay. And Dr. Marshall indicates that
6 his main concern here is that you might be suddenly
7 incapacitated per a spasm and put yourself or others
8 at risk?

9 A. That's correct.

10 Q. And that's a legitimate concern to have,
11 right?

12 A. Yes.

13 Q. In fact, you had the same concern at the
14 time you had the attack, that's why you went home,
15 right?

16 A. Right. Because I felt that -- not that I
17 was going to pass out or anything, but I just knew I
18 wasn't physically feeling okay to perform my job.

19 Q. So would it be reasonable for
20 Dr. Marshall to take steps to ensure that you can
21 perform the job safely in terms of not harming
22 yourself or others?

23 A. Yes.

24 Q. And you saw Dr. Issa that -- that same
25 day, right?

1 A. I'm pretty sure --

2 Q. Let me see if I can refresh your
3 recollection.

4 A. Yeah, according to my records, I saw
5 Dr. Issa on the same day, yes.

6 (Court Reporter marked
7 Defendant's Exhibit 15.)

8 BY MR. WIT:

9 Q. Showing you what I marked as Exhibit 15,
10 this is a record of a visit I believe you had with
11 Dr. Issa on March 13th, 2008. Review that and make
12 sure I'm correct in that regard.

13 A. Yes. This looks like my visit to him,
14 yes, it does.

15 Q. Okay. And in this record, if you look
16 at -- on the first page, there is a section that's
17 labeled History of Present Illness.

18 A. Right.

19 Q. It indicates that Dr. Issa reports you
20 told him that you had experienced rare episodes of
21 chest tightness relieved with nitroglycerin, and that
22 you denied any cardiac symptoms; is that right?

23 A. Right.

24 Q. Did you tell Dr. Issa that you had an
25 attack severe enough such that you thought you

1 A. No.

2 Q. That's accurate?

3 A. That's correct.

4 Q. And what were your job responsibilities
5 as -- but you -- strike that.

6 You did the gatekeeper position, when you
7 had it, on a regular, full-time, daily basis?

8 A. That's correct.

9 Q. And what were your job responsibilities
10 as a gatekeeper?

11 A. When parts were being moved from the
12 warehouse to the assembly lines, I scanned the parts
13 out and assigned them to what locations they were
14 going to.

15 So from what my understanding is, each
16 line was billed for parts they used, and this was to
17 keep track of what parts were going where in the
18 factory.

19 Q. And did you work at a desk?

20 A. Yes.

21 Q. The entire time?

22 A. Yes.

23 Q. And did you work alone?

24 A. Yes.

25 Q. Were there periods of time when you were

1 BY MR. WIT:

2 Q. Okay. Back from lunch, Mr. Wurzel.
3 You're still under oath, you know?

4 A. Yes.

5 Q. Okay. So you're placed into this
6 gatekeeper position as of March 17th, 2008, right?

7 A. That's correct.

8 Q. And you're told that it's going to be
9 temporary?

10 A. That's correct.

11 Q. And that ultimately you'll have to bid
12 back out into a permanent position?

13 A. That's correct.

14 Q. All right. Now, did you believe that you
15 were being treated unfairly in some way in being
16 placed in the gatekeeper position?

17 A. I did, yes.

18 Q. How so?

19 A. Seeing as how I have a medical condition,
20 and I know other drivers that have medical conditions,
21 but yet they're still okay to drive.

22 Q. Well, which drivers are you referring to
23 specifically?

24 A. Well, I'd prefer not to mention any
25 names.

1 A. No, I don't.

2 Q. So you're not really saying here that you
3 needed some form of accommodation to perform your job,
4 right?

5 A. No, I was capable of performing my
6 duties. I performed them to a hundred percent in
7 100-degree heat.

8 Q. Right. So you're saying Whirlpool should
9 have let you continue at your job as a forklift
10 operator in March of 2008 without any restriction or
11 need for accommodation?

12 A. I think, in my opinion, that if I would
13 have had incidents of being unsafe or jeopardizing
14 people's lives, then, yes, I think they would have
15 been substantiated, I'm not sure if that's the word,
16 in their decision.

17 But I know people that are healthy
18 drivers that hit people. So --

19 Q. But because you hadn't had any safety
20 incidents in the past, you felt that you should have
21 been allowed to continue as a forklift operator?

22 A. I think I should have, yes, in my
23 opinion, yes.

24 Q. And in your opinion, you didn't need any
25 type of accommodation in order to continue in that

1 document (indicating).

2 A. I'm just trying to remember which order I
3 got these in. Okay. I have the exhibit.

4 Q. Okay. If you'll turn to the third page,
5 you'll see two entries in June, one on the 10th and
6 one on the 17th?

7 A. Okay. Yes, I see that.

8 Q. Okay. Now, I want to focus for a
9 moment -- so this would indicate, at least, that you
10 at least had two episodes in June of 2008, right, two
11 spasms?

12 A. Yes. According to these records, yes.

13 Q. It may have been more than that, but the
14 other ones you may just not have gone to the health
15 center?

16 A. That's correct.

17 Q. Okay. Now, with respect to the spasm
18 that brought you to the health center on June 10th,
19 the entry indicates that Bill Hartwig took you to the
20 health center on that occasion?

21 A. Yes, yes.

22 Q. And is that accurate?

23 A. Yes. Because I called him over to my
24 jeep, because I felt bad.

25 Q. To your jeep?

1 A. Oh, no. This is when I was the
2 gatekeeper. I must have called him down to the desk,
3 indicating that I felt bad and I wanted to go to the
4 health center.

5 Q. Did you need assistance to get to the
6 health center?

7 A. I didn't feel real good. I just had him
8 take me down on a cart instead of walking. It wasn't
9 a very far distance, but instead of walking down, I
10 just had him take me down in a cart.

11 Q. Well, what was your concern about walking
12 or going by yourself?

13 A. I might have been lightheaded to the
14 point to where I felt better having somebody with me.

15 Q. So was your concern, at least, in part,
16 that you might injure yourself on -- if you were to go
17 by yourself to the health center?

18 A. I don't know if injured myself, or if it
19 might have been a bad enough one where, you know, it
20 had me worried, you know, about just how I felt.

21 Q. And potentially losing consciousness on
22 the way to the health center?

23 A. No. Just I was feeling very lightheaded
24 and tired, but I wasn't to the point where I was
25 falling over or anything.

1 Q. But you were to the point where you felt
2 you needed someone to actually take you to the health
3 center?

4 A. Oh, yes.

5 Q. Okay. And then you indicate -- and it
6 indicates here, States he just had his fifth episode
7 of angina in the last four days. He had just taken a
8 nitro tablet and was starting to feel better. BP 138/
9 80.

10 Does that accurately reflect what
11 happened when you got to the health center?

12 A. Uh-huh, yes.

13 Q. Okay. And you're -- and this one is a
14 severe attack, would that be fair to say?

15 A. Well, I was stating that I was feeling
16 better. I think I just wanted to have my blood
17 pressure and everything checked to see if I was
18 stabilizing and coming down, if the pills had worked.

19 Q. All right. And the last sentence says,
20 Appears very fatigued and voiced that he wanted to go
21 home.

22 A. So it must have knocked the wind out of
23 me, or taken the wind out of me to where --

24 Q. Is that accurate?

25 A. Yes.

1 Q. All right. So you went home as a result
2 of this attack?

3 A. Yes.

4 Q. And then the nurse with whom you spoke
5 was Ms. Yontz, right?

6 A. Yes.

7 Q. Okay. Then you have another attack or
8 spasm on the 17th, a week later, that causes you to go
9 to the health center and go home?

10 A. Yeah, according to this.

11 Q. Do you have any reason to doubt that?

12 A. Oh, no, no. I'm not questioning that.

13 Q. All right. And, actually, after the
14 spasm on the 17th, you went to Dr. Issa, didn't you?
15 It's not on here.

16 A. I couldn't say with all certainty.

17 Q. Okay. Well, let's show you this.

18 A. If it's in his report, then --

19 (Court Reporter marked
20 Defendant's Exhibit 18.)

21 BY MR. WIT:

22 Q. This is 18, which I will tell you is a
23 record we received from Dr. Issa with respect to a
24 visit you had with him on June 17th, 2008.

25 A. Okay.

1 for you having had attacks. Do you see where we are
2 looking?

3 A. Yes, I see.

4 Q. All right. So on 9-5, the indication is
5 that this one -- the spasm was really bad. That's how
6 you describe it, right?

7 A. Right.

8 Q. And that you took a nitro?

9 A. Refused O2, because it didn't really
10 help.

11 Q. Right. So you went home?

12 A. Right.

13 Q. Does this entry on 9-5-08 accurately
14 describe what actually happened when you were at the
15 health center?

16 A. Yeah. Because I know oxygen don't --

17 Q. -- doesn't help?

18 A. No. Because once I get everything
19 flowing, I'm pretty much breathing on my own and
20 everything.

21 Q. All right. And then you have another bad
22 spasm on September 26th, 2008, that causes you to go
23 to the health center?

24 A. Yes.

25 Q. And the notation here is that you were

1 brought to the HC by your supervisor after taking
2 three nitro tablets; BP 168/96; states he was dizzy
3 and fatigued. Employee wanted to go home and did so.

4 Is that accurate?

5 A. As far as the third nitro, I'm not a
6 hundred percent on. But as far as the rest of it,
7 yes.

8 Q. Okay. You're not sure one way or another
9 whether you took three nitro tablets on that occasion?

10 A. I know when I'm on my third nitro, I'm
11 usually calling EMS. I'm not -- well, I'm going to
12 the health center, but I'm having them call EMS,
13 because if I'm on my third one --

14 Q. Well, are you saying that this notation
15 is incorrect or you don't know one way or the other?

16 A. I'm saying I don't know one way or other.

17 Q. Okay. So you go home on September 26th,
18 right?

19 A. Right.

20 Q. And you're saying that after you go home,
21 you're called at home by whom? Your log says
22 Barb Dewey called.

23 A. Okay. Then that's who called me.

24 Q. All right. When did she call you, that
25 same day or --

1 A. Yes. It must have been. Because that
2 was on the 26th. If I'm not mistaken, that was a
3 Friday.

4 Q. September 26th?

5 A. Why it sticks out in my head, I couldn't
6 really tell you, but --

7 Q. And describe your conversation with
8 Ms. Dewey.

9 A. She just told me that, once again, I
10 couldn't come back to work until I was cleared through
11 the company doctor, and that my successful bid was
12 being taken away from me due to me not being able to
13 come back to work until I seen the company doctor.

14 Q. Did you know -- did she explain to you
15 why that was the case, why the bid was being taken
16 away?

17 A. Because I had to be cleared through the
18 company doctor until I could come back to work so --

19 Q. And the job started on a particular day?

20 A. Right, as far as I know.

21 Q. So because you weren't able to start the
22 job on a particular day --

23 A. The job was taken away from me.

24 Q. Okay. And Barb, at least, told you that
25 you had to see Dr. Marshall before you could return to

1 work?

2 A. That's correct.

3 Q. And do you know what the basis for that
4 decision was, why they wanted -- why Ms. Dewey was
5 telling you had to do this?

6 A. I have no idea why.

7 Q. Okay.

8 A. I couldn't speculate.

9 Q. Did you think it was unfair?

10 A. Once again, yes, because I just went home
11 on FMLA. I wasn't off for a prolonged period of time.
12 I just went home that day.

13 Q. Now, you saw Dr. Marshall shortly
14 thereafter, right, on October 2nd, 2008?

15 A. Yep. Well, yes. According to my
16 records, and I knew I had set an appointment with my
17 cardiologist also.

18 MR. WIT: Okay. 21, lucky 21.

19 (Court Reporter Marked
20 Defendant's Exhibit 21.)

21 BY MR. WIT:

22 Q. All right. Exhibit 21 is a report with
23 respect to an examination between you and Dr. Marshall
24 on October 2, 2008.

25 Read the Subjective and Objective and

1 tell me if this is an accurate description of what
2 happened during your visit with Dr. Marshall.

3 A. To the best of my knowledge, this is.
4 The three nitros, again, I take into question, but I
5 could be mistaken on it.

6 Q. Uh-huh. But outside of your -- outside
7 of whether or not you're sure about that, this is --
8 Dr. Marshall accurately describes what you and he
9 discussed?

10 A. To the best of my knowledge, yes.

11 Q. Okay. And, again, he also expresses his
12 concern -- expresses that he continues to be concerned
13 as to whether you can drive a towmotor or work in
14 safety-sensitive areas, right?

15 A. That's correct.

16 Q. And so he recommends that you remain out
17 of work at this point?

18 A. Yes. Until I see my doctor -- or my
19 cardiologist.

20 Q. Okay. Did he also ask you if he could
21 speak with your cardiologist?

22 A. Yes. I remember signing a paper giving
23 him permission to speak with Dr. Issa.

24 Q. Obviously, he wants to gain a better
25 understanding, himself, as to your condition and how

1 Q. Look under the last heading, Plan.

2 A. Oh, oh, sorry. I was just reading the
3 Subjective.

4 Q. Oh, okay.

5 A. Yeah. That's the plan that they had set
6 up back in March.

7 Q. Right, right. This is nothing new to
8 you, right? You had been told that before.

9 A. Right. This is a continuation, yes.

10 Q. Now, at this point, October 7th, do you
11 have a job to go back to yet?

12 A. No.

13 Q. No. All right. What happened with
14 respect to that issue?

15 A. If I may refer to my notes, I know on
16 10-8, Carol Wasserman called me.

17 Q. So, 10-8, Ms. Wasserman calls you?

18 A. To inform me there is three options I
19 had: A job bid on round ware on afternoons; a job in
20 the paint department on afternoons, that I had enough
21 time to secure; and if I didn't take any one of those
22 two options, that my third option was to take layoff.

23 Q. So the two options, she said, the job in
24 round ware?

25 A. That's correct.

1 or do you think anything needs to be taken out of it?

2 A. I see here on the work environment, There
3 were eight rotations noted along the line.

4 I'm not sure what they mean by
5 "rotations," whether that's where the conveyor turns,
6 because we consider rotations, like I'm sitting in
7 this chair, every half hour we move around. So I'm
8 not sure what they mean by rotations there.

9 Q. Okay. So you're unable to express an
10 opinion one way or another on --

11 A. Right, because I know there wasn't eight
12 jobs up there for us to rotate between.

13 Q. Okay.

14 A. As far as turns in the line, that could
15 be. But like I said, I'm not sure.

16 Q. As far as you read Exhibit 20, though,
17 this accurately describes the position that you went
18 to in paint?

19 A. Yes.

20 Q. Do you know that this Exhibit 20, that
21 this job analysis, job site review, was conducted for
22 the purpose of you assuming this position?

23 A. I'm not sure I follow.

24 Q. All right. Do you know whether or not a
25 job site review, as is reflected in Exhibit 20, was

1 MR. WIT: Okay. Exhibit 26.

2 (Court Reporter marked

3 Defendant's Exhibit 26.)

4 BY MR. WIT:

5 Q. Exhibit 26, that's the letter you
6 received?

7 A. Yes, it is.

8 Q. Do you understand who ordered the
9 independent medical exam?

10 A. As far as my understanding, it was -- I
11 don't know if it was Dr. Marshall, or who at work, but
12 it was somebody at work who relayed the order.

13 Q. Do you know why it was ordered?

14 A. Not really.

15 Q. And you had the IME on November 4th -- or
16 you had the IME on November 13, 2008; is that right?

17 A. Yes.

18 Q. And the IME was with Dr. Haridas Biswas,
19 right?

20 A. That's correct.

21 Q. Were you familiar with Dr. Biswas?

22 A. No, I had never seen him before in my
23 life.

24 Q. So that was the first time you'd seen
25 him?

1 what happened?

2 A. No, because I don't know who
3 Dr. Stockmaster is. It must be a misprint because --

4 Q. Could it be Dr. Stockton?

5 A. He's the one that did my catheter. He
6 told the nurse here earlier that he was taking up to
7 nine at a time. That would kill me.

8 Q. Well, she indicates here that you told
9 her that you can take up to 25 nitroglycerin in a day;
10 and you told her that you had told the nurse earlier
11 that you were taking up to nine at a time.

12 Are you saying -- did you tell Ms. Horne
13 that?

14 A. I remember talking with Dr. Issa about
15 taking nitroglycerin, if that would affect my heart,
16 he told me I could take up to 25 a day if I needed.

17 Q. Okay.

18 A. And this nine at a time, I know if I had
19 to take that many, that would kill me.

20 Q. So you're saying you didn't say that to
21 Ms. Horne?

22 A. No. I would never take nine. Because I
23 know after three, I better be calling EMS, because I'm
24 having serious problems.

25 Q. But you told her that you could take up

1 to 25 nitros in a day?

2 A. I told her that I talked to my physician,
3 Dr. Issa, and he told me I could take up to 25 a day
4 with no ill effects to my heart or --

5 Q. Did you return to work after meeting with
6 Ms. Horne?

7 A. I have not.

8 Q. You haven't returned to work since?

9 A. I haven't returned to work since 2-5-09.
10 I haven't worked in almost eight months now.

11 Q. Did you meet with Dr. Horne again after
12 meeting with -- I'm sorry, Dr. Marshall?

13 A. I've met with Dr. Marshall; I've seen Dr.
14 Issa; I've met with Mark; I've met with Barb Dewey.
15 I've met with anybody I can think to meet with, and
16 they will not let me come back.

17 Q. Well, did you speak with Ms. Dewey after
18 meeting with Ms. Horne?

19 A. I can't remember if I did or not, to be
20 honest.

21 Q. Well, you're -- okay. There is a
22 notation in your incident log on the 10th that you
23 asked Barb Dewey, How getting paid.

24 A. Right.

25 Q. So did you have a conversation with her?

1 A. That's correct.

2 Q. Do you know how long they remain in
3 effect before it rolls off?

4 A. It's -- if I'm not mistaken, it's -- like
5 this one that says 4-9-08 --

6 Q. Yeah.

7 A. -- it would roll off on 4-9-09.

8 Q. Okay.

9 A. So it has to --

10 Q. It's gone now?

11 A. -- be a year after. Yes, that's correct.

12 Q. Okay. And you received no subsequent
13 discipline for attendance violations, is that right,
14 after this one?

15 A. Oh, no, because I wasn't working no more.

16 Q. Did you lose any pay or benefits or
17 seniority or anything else as a result of this
18 discipline?

19 A. No.

20 Q. Do you believe that you've been
21 retaliated against in any way for using family and
22 medical leave?

23 A. No.

24 Q. Now, there's also a claim in your
25 complaint that you've been subjected to the

1 Q. Or anyone else at Whirlpool? Do you
2 think anybody at Whirlpool made the decisions they
3 made with respect to your employment with the intent
4 of causing you any harm?

5 A. That I cannot answer. I don't know.

6 Q. Do you have any knowledge of anyone
7 having any type of past criminal or tortious or
8 dangerous type conduct or background, of the managers
9 who you've dealt with or the doctors who you've dealt
10 with at Whirlpool?

11 A. I hope they don't have criminal
12 backgrounds. I don't know.

13 Q. So you don't know?

14 A. Not to my knowledge. No, I don't know.
15 I'm at a loss for why this is going on. I just don't
16 understand.

17 Q. A couple of questions, Mr. Wurzel, about
18 your responses to the company's written
19 interrogatories.

20 We're almost finished. Do you need a
21 break, or are you doing okay?

22 A. No. It's not like I got to go to work.

23 (Court Reporter marked
24 Defendant's Exhibit 38.)

25 BY MR. WIT: